

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION FIVE

STATE OF MISSOURI,)	No. ED100658
)	
Respondent,)	Appeal from the Circuit Court
)	of Jefferson County
vs.)	
)	
PATRICK K. RUDOLPH,)	Honorable Raymond H. Dickhaner
)	
Appellant.)	Filed: March 10, 2015

Patrick K. Rudolph (“Defendant”) appeals from the judgment of the trial court entered after a jury convicted him of two counts of the class A misdemeanor of assault of a corrections officer in the third degree, in violation of section 565.083, RSMo 2000. Specifically, Defendant contends the trial court plainly erred in not *sua sponte* ordering a mistrial after an alternate juror participated in jury deliberations. We affirm the judgment of the trial court.

Division Five holds:

- (1) Defendant affirmatively waived appellate review of his claim of error as he endorsed the challenged action of the trial court.
- (2) The trial court did not plainly err in failing to *sua sponte* declare a mistrial as the record establishes the alternate juror’s participation in deliberations was harmless and Defendant does not clearly demonstrate he suffered a manifest injustice.

Opinion by: Angela T. Quigless, C.J.

Lawrence E. Mooney, J., and Sherri B. Sullivan, J., Concur.

Attorney for Appellant: Erika R. Eliason

Attorney for Respondent: David C. Casey

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